

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>JOANNA MASHER,</b>	:	<b>CIVIL ACTION NO. 1:07-CV-2016</b>
	:	
<b>Plaintiff</b>	:	<b>(Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>MICHAEL J. ASTRUE</b>	:	
<b>Commissioner of Social</b>	:	
<b>Security Administration,</b>	:	
	:	
<b>Defendant</b>	:	

**ORDER**

AND NOW, this 15th day of October, 2008, upon consideration of the report of the magistrate judge (Doc. 16), recommending that plaintiff's appeal from the decision of the administrative law judge ("ALJ") be denied, to which plaintiff filed objections (Doc. 17), and, following an independent review of the record, it appearing that the ALJ's decision is supported by substantial evidence<sup>1</sup> including objective medical evidence, testimony by a qualified vocational expert (Doc. 10 at 216-21), plaintiff's testimony that her functional limitations affect solely her dextral extremities (id. at 201-02, 204-09, 212), and the medical opinions of examining physicians (see id. at 18-20), and that plaintiff's functional limitations do not preclude her from engaging in "any substantial gainful activity," see 42 U.S.C.

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<sup>1</sup> "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate." Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999) (citation omitted). It is "more than a mere scintilla" but less than a preponderance of the evidence. Jesurum v. Sec'y of U.S. Dep't of Health & Human Servs., 48 F.3d 114, 117 (3d Cir. 1995).

§ 432(d)(1)(A), and it further appearing that the ALJ rejected the opinion of Dr. Allen Togut, plaintiff's treating physician, that plaintiff is unable to work in any capacity because Dr. Togut's opinion is contrary to objective medical evidence, which overwhelmingly reflects that plaintiff's condition hinders her performance of certain work functions but does not foreclose her from all gainful employment (Doc. 10 at 19-20),<sup>2</sup> and that the ALJ properly disregarded Dr. Togut's opinion that plaintiff is disabled because such a conclusion falls within the province of the Commissioner, see 20 C.F.R. § 404.1527(e), it is hereby ORDERED that:

1. The report and recommendation of the magistrate judge (Doc. 16) is ADOPTED.
2. Plaintiff's appeal from the decision of the Commissioner of Social Security (Doc. 1) is DENIED.
3. The Clerk of Court is directed to CLOSE this case.

S/ Christopher C. Conner  
CHRISTOPHER C. CONNER  
United States District Judge

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<sup>2</sup> See, e.g., Salles v. Cmm'r of Soc. Sec., 229 F. App'x 140, 148 (3d Cir. 2007) (finding no error where ALJ rejected treating physician's opinion that plaintiff was fully disabled in favor of another physician's opinion that plaintiff's condition did not preclude her from working because the latter opinion was more consistent with the objective medical evidence); Pachilis v. Barnhart, 268 F. Supp. 2d 473, 484 (E.D. Pa. 2003) (accepting ALJ's rejection "[i]n light of the fact that, of all the physicians to examine [the claimant], Dr. Togut alone suggested that she was totally disabled, such that his opinion was contradicted by the other medical evidence of record, including the reports of other doctors and the results of clinical testing.").